REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the amendments and remarks herewith. The present amendment is being made to facilitate prosecution of the application.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 1-16 and 24-26 are pending. Claim 1 is independent and is amended herein. Claims 17-23 have been cancelled by this amendment, however, Applicants reserve the right to reintroduce the claims and/or the subject matter of the claims by filing one or more divisional/continuation applications.

The Examiner has taken official notice of certain concepts relating to compression and decompression of data signals for transmission and use, and the MPEG2 data packetizing method. Through inadvertent oversight and without any deceptive intent, Applicant's attorney's failed to traverse the Examiner's taking of official notice, Applicant should not be prejudiced for this inadvertent oversight, accordingly, the Examiner's official notice, and the subsequent assertion that Applicant admits to the official notice as facts is respectfully traversed. Applicant traverses the Examiner's assertion because the Examiner has not indicated that these allegedly well known concepts are well known in the subject area of the instant invention, that is systems combining service data and broadcast digital television data for selection by users.

Further, the Examiner's prior statements of official notice, taken in the office action dated 1/27/05, do not correspond to the statements of official notice in the instant office action. For at least as much as these statements are inconsistent, neither Applicant, nor Applicant's attorneys can adequately assess the scope of the official notice.

Therefore, because the official notice is hereby traversed, and because Examiner's statements of official notice do not correspond, it is requested that the Examiner withdraw the arguments based on official notice and present Applicant with documentary evidence of the matters for which official notice has been taken as outlined under M.P.E.P. § 2144.03.

II. REJECTIONS UNDER 35 U.S.C. §§ 102 and 103

In the Office Action, claims 17 and 19 were rejected under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 5,966,120 to Arazi. Claims 1, 2, 4, 6, 9-11, 13 and 25 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,698,020 to Zigmond in view of U.S. Patent No. 6,029,045 to Picco. Claim 3 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and in further view of U.S. Patent No. 5,970,249 to Holzle. Claim 5 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and further in view of U.S. Patent No. 6,434,653 to Winston. Claim 7 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and further in view of U.S. Patent No. 5,619,247 to Russo. Claim 8 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and further in view of U.S. Patent No. 5,729,549 to Kostreski. Claims 12, 24 and 26 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and further in view of U.S. Patent No. 6,701,526 to Trovato. Claims 14-16 were rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Zigmond in view of Picco and further in view of U.S. 2002/0016963 to Inoue. Claim 20 was rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Arazi in view of Inoue in view of U.S. Patent No. 5,886,995 to Arsenault. Claim 21 was rejected for the same reason as claim 20 and further in view of U.S. Patent No. 5,673,401 to Volk. Claim 22 was

rejected in view of Arazi, Inoue, Arsenault, Volk and Picco. Claim 23 was rejected in view of Arazi, Inoue, Arsenault, Volk and U.S. Patent No. 5,790,935 to Payton.

III. ARGUMENTS

With reference to section 2 and 3 of the Office Action rejecting claims 17 and 19 under 35 U.S.C. § 102(e) as allegedly anticipated by U.S. Patent No. 5,966,120 to Arazi, claims 17 and 19 have been cancelled, accordingly, this rejection is now moot.

With reference to Sections 4 and 5 of the Office Action rejecting claims 1, 2, 4, 6, 9-11, 13 and 25 rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over U.S. Patent No. 6,698,020 to Zigmond in view of U.S. Patent No. 6,029,045 to Picco, Applicant responds as follows:

Amended independent claim 1 recites, *inter alia*:

> the selection signal may be provided by the end user at any time during receipt of the broadcast digital television data and independently of the broadcast digital television data and the controller is responsive at any time during receipt of the broadcast digital television data and independently of the broadcast digital television data to output said selected portions;

Applicant respectfully submits that none of the relied upon portions of the cited references teach the above-identified features of claim 1.

Claim 1 now clarifies that the selection signal may be provided at any time during receipt of the broadcast digital television data and the controller is responsive at any time during receipt of the broadcast digital television data. As will be discussed further below, this is not true of Zigmond. Zigmond relies on a triggering event (lines 36 to 52 of column 4) or, where selecting between advertisement (in the embodiment bridging columns 16 and 17), selection during a predetermined window of time for that occurrence.

As the examiner notes, Zigmond discloses a broadcast data service in the form of advertisements. These are broadcast together with the broadcast digital television data both as advertisements for live viewing and advertisements for local storage and subsequent insertion. Although some user selection is provided (column 16, lines 65 to 67 and column 17, lines 1 to 5), this is only selection between two or more appropriate advertisements (for an available time slot in the video programming feed) (column 16, lines 65 to 67). Hence, there is not complete independence of selection as will be discussed below.

Zigmond does not teach the possibility of selection of an advertisement truly independently of broadcast digital television data. The paragraph bridging columns 16 and 17 mentions the possibility that "two or more appropriate advertisements are selected for an available time slot in the video programming feed." However, this is only selection between advertisements for a particular time slot. There is no disclosure of freely selecting the time of insertion. Lines 36 to 52 of column 4 refer to a "triggering event." Similarly, lines 26 to 36 of column 7 refer to "an appropriate time specified by encoded data in the video programming feed 52." Also, lines 29 to 43 of column 8 refer to a "triggering event." Column 16, lines 30 to 43 do refer to inserting an advertisement into a video programming stream "without regarding to the position of the conventional advertisement slot." However, for this embodiment, it describes that a "delay code is embedded in the video programming, which functions to delay or pause the programming during the length of the advertisements. Once the advertisements are completed, the paused programming resumes." It is not all clear how this system is intended to work, but, irrespective, it still does not provide a system where the selected portions of the broadcast data service data having digital audio/video data is selected at any time during receipt of the broadcast digital television data, independently of the broadcast digital television data and simultaneously with

continued receipt of the broadcast digital television data. The Examiner has referred to column 18, lines 7 to 21, but this passage refers to downloading of the advertisements in advance and not to outputting of those advertisements during continued receipt of broadcast digital television data.

Amended claim 1 specifies that the controller causes the memory to output the selected portions of the broadcast data service data simultaneously with continued receipt of the broadcast digital television data. Furthermore, it specifies that the selection signal may be provided by the end user at any time during receipt of the broadcast digital television data and independently of the broadcast digital television data. It is respectfully submitted that Zigmond provides no disclosure or suggestion of this.

Further, as indicated in the first paragraph of Zigmond in column 1, it "relates to displaying advertisements to viewers of video programming, in particular", it "is directed to methods and systems for selecting and inserting advertisements into a video programming feed at the household level." It is respectfully submitted that, in the general field of advertising with video broadcast, advertisements are not provided in place of the main video programming. Advertisements are always provided in an interspersed manner with regard to the main video programming so that a viewer does not miss part of that video programming. It is further submitted that Zigmond must be interpreted in this manner as it does not provide any explicit teaching to the contrary.

In contrast to Zigmond, the present indentation is not concerned with advertising. It relates to a system in which broadcast data service data is transmitted together with broadcast digital television data. A viewer can choose to access the broadcast data service data at any time and continues to receive the broadcast digital television data irrespective of whether previously stored broadcast data service data is being viewed. Thus, if the user chooses to view the digital

audio/video data included in the broadcast data service data, that user will miss any broadcast digital television data which happens to be transmitted at that time.

This completely independent nature of the broadcast data service data of the present invention makes it quite different to what is described in Zigmond.

With reference to section 1 of the Office Action, the Examiner has referred to Zigmond's mention of triggering. As best understood, it appears the Examiner is referring to lines 36 to 52 of column 4. This passage states that "an appropriate time for displaying a selected advertisement to the viewer is indicated by a triggering event. Typically, the appropriate time coincides with advertisements that are originally carried on the video programming feed." It also states that at "the appropriate time indicated by the triggering event, the video programming feed is interrupted and the selected advertisement is displayed to the viewer using a display screen of the home entertainment system. In effect, the advertisement originally carried on the video programming feed is overwritten with the selected advertisement."

Although, according to Zigmond, a broadcast signal might be continually received, the broadcast signal of Zigmond can be considered to carry not only broadcast digital television data as part of main video programming but also alternative data for the advertisements (which can be replaced by advertisement data stored locally in memory). In this respect, Zigmond does not teach anywhere replacing the broadcast digital television data with advertisement data stored locally in memory. At most, it discloses using the advertisement data stored locally in memory to replace equivalent advertisement data received with the broadcast signal. Hence, in this way, Zigmond does not teach the output of broadcast data service data (having digital audio/video data) "simultaneously with continued receipt of the broadcast digital television data," as recited in claim 1.

Even referring to Picco, the skilled person would still not arrive at the present invention as described in independent claim 1. Thus, for at least the reasons recited herein Applicant submits that claim 1 patentably distinguishes over the relied upon portions of the cited references and is allowable. Withdrawal of the rejection of claim 1 is respectfully requested.

Finally, with respect to the rejection of claim 26, the Examiner appears to have misunderstood claim 26. This claim concerns a digital TV stream of particular format, packaged up with non-real-time data in a different format. The Examiner's argument appears to relate to relaying a TV signal over a firewire IEEE 1394 network. However, according to claim 26, although the data broadcast service is transmitted with the digital television data in the same overall arrangement as part of the same broadcast signal, the actual protocol used for the data portions of the broadcast data service having digital audio/video data is different from the protocol used for the real-time audio/video data of the broadcast digital/television data. The relied upon portions of the cited references make no disclosure or suggestion of this feature. In the Examiner's example a data stream of one format is repackaged to be transmitted within another format. However, with the embodiment described in claims 26 the real-time audio/video data is transmitted in one protocol alongside non-real-time audio/video data in an alternative protocol. Accordingly, it is submitted that claim 26 patentably distinguishes over the relied upon portions of the cited references and is allowable.

It is submitted that the shortcomings of Zigmond discussed herein are not overcome by any of the relied upon portions of the cited references discussed in the office action. Further, for at least the reasons cited herein with respect claim 1, it is submitted that the rejections of claims 2-16 and 24-265 are deficient and should be withdrawn. Finally, nothing in this response should be

understood as an admission of all or part of any of the Examiner's contentions regarding the teachings of any of the references cited herein, or relied upon by the Examiner.

III. DEPENDENT CLAIMS

Claims 2-16, and 24-26 are dependent from independent claim 1, discussed above, and are therefore believed patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, however, the individual reconsideration of the patentability of each on its own merits is respectfully requested.

CONCLUSION

In the event that the Examiner disagrees with any of the foregoing comments concerning the disclosures in the cited prior art, it is requested that the Examiner indicate where in the reference or references, there is the bases for a contrary view.

In view of the foregoing remarks, it is believed that all of the claims in this application are patentable over the prior art, and early and favorable consideration thereof is solicited.

Please charge any fees incurred by reason of this response and not paid herewith to Deposit Account No. 50-0320.

Respectfully submitted,
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